

Editor's note: aff'd, on 7 of 8 causes of action (Aug. 2, 1985), 629 F.Supp. 9; aff'd Jan. 17, 1986 on 8th cause; aff'd except for royalty rate, No. 86-1301 (10th Cir. April 9, 1987), petition for rehearing denied 7/8/87 -- 816 F.2d 502

COASTAL STATES ENERGY CO.

IBLA 82-737

Decided February 9, 1983

Appeal from a decision of the Utah State Office, Bureau of Land Management, which imposed certain readjusted terms and conditions on coal leases SL 062583 and U 062453.

Affirmed in part; set aside and remanded in part.

1. Coal Leases and Permits: Leases -- Mineral Leasing Act: Generally

Where notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements for readjustment, and BLM may subsequently provide the specific terms or conditions for readjustment.

2. Coal Leases and Permits: Leases -- Mineral Leasing Act: Generally

Coal leases issued prior to Aug. 4, 1976, the date of enactment of the Federal Coal Leasing Amendments Act of 1976, are at the time of readjustment subject to the requirements of that Act and regulations promulgated pursuant to that Act.

3. Coal Leases and Permits: Leases -- Mineral Leasing Act: Generally

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where the readjusted provisions objected to by the lessee are mandated by statute and/or regulation or where such provisions are in accordance

with the proper administration of the lands.

APPEARANCES: Brian E. McGee, Esq., Denver, Colorado, and Eugene O. Rooke, Esq., Houston, Texas, for appellant; David K. Grayson, Esq., Office of the Regional Solicitor, Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management; K. L. McIff, Esq., Richfield, Utah, for the intervenors.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Coal lease SL 062585 was issued September 11, 1941, and coal lease U 062453 was issued March 1, 1962, to predecessors in interest 1/ of the present lessee, Coastal States Energy Company (Coastal). 2/ In 1981 prior to the readjustment date of each lease, the Utah State Office, Bureau of Land Management (BLM), notified Coastal that there would be a readjustment of the lease terms and conditions of each lease pursuant to the provisions of 43 CFR 3451. 3/ Subsequently, BLM notified the lessee of the specific alterations in the lease terms and conditions. This notification of the specific terms of readjustment was made prior to the 40-year anniversary date of lease SL 062583 and 17 days after the 20-year anniversary date of U 062453. The notices of readjustment provided that the lessee would be allowed 60 days within which to file objections to the proposed readjustment terms. In each instance, Coastal filed timely, detailed objections to the inclusion of certain sections in the readjusted leases.

On March 18, 1982, BLM issued a decision relating to both leases holding that the readjusted lease provisions to which the lessee had objected were properly imposed. Coastal appealed to this Board from that decision.

1/ On Aug. 30, 1982, Unelco, Inc., Mildred B. Mortensen, John B. Mortensen, Daniel L. Mortensen, and Maury B. Mortensen filed a motion to intervene in this matter. Those seeking to intervene were the holders of the coal leases in question on Dec. 14, 1973, when Coastal States Energy Company purchased the leases.

2/ At the time each lease was issued, section 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provided:

"Leases shall be for indeterminate periods upon condition * * * that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine unless otherwise provided by law at the time of the expiration of such periods."

Section 7 of the Mineral Leasing Act of 1920 was amended by section 6 of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 207(a) (1976), to read in pertinent part as follows: "Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of such ten-year period thereafter if the lease is extended."

3/ That provision provides in pertinent part:

"§ 3451.1 Readjustment of lease terms.

"(a) (1) All leases issued prior to August 4, 1976, shall be subject to readjustment at the end of the current 20-year period and at the end of each 10-year period thereafter. All leases issued after August 4, 1976, shall be subject to readjustment at the end of the first 20-year period and, if the lease is extended, each 10-year period thereafter."

Coastal argues on appeal that the Secretary is barred by statute and by the terms of the leases from readjusting the terms and conditions of those leases. Coastal contends that the Secretary failed to propose any readjusted terms and conditions for SL-062583 prior to the end of the second 20-year term and that the Secretary also failed to render a decision regarding final readjusted terms and conditions for U 062453 prior to the end of its initial 20-year period.

Coastal also contends that the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. §§ 201-209 (1976), is only prospective and, therefore, not applicable to pre-FCLAA leases, and that in the alternative, if applicable, only the provisions of section 6, 30 U.S.C. § 207 (1976), relating to the 10-year production requirement and the 12.5 percent minimum production royalty for surface mined coal should be applied to all Federal coal leases. Further, Coastal argues that readjustment constitutes a continuation of the original lease with new terms, and does not effectuate a termination of that lease and the issuance of a new lease. In addition, Coastal asserts that the purported readjustments (1) breach its contractual rights; (2) are factually unsupported; and (3) are arbitrary, capricious, and an abuse of discretion.

In its answer to Coastal's statement of reasons BLM contends that notice to lessee, in advance of the readjustment date of the lease, that there will be a readjustment of the lease terms and conditions, satisfies the requirements of the pertinent statutes and regulations; that leases issued prior to August 4, 1976, and which are subject to readjustment after that date must be readjusted to conform to the FCLAA; and that whether readjustment of a Federal coal lease effectuates the termination of the original lease and the issuance of a new lease or continuation of the original lease need not be decided since the requirements exist for either. BLM further brings into issue the standards of review applicable to readjusted lease terms and conditions. BLM contends that insofar as lease term or condition readjustments are required by statute or applicable regulations, they must be imposed by BLM and this Board is without authority to alter them. BLM further contends that where a term or condition is not required by a specific statute or regulation, the standard of review should be whether the term or condition comports with Departmental policy and is reasonable or whether its imposition is arbitrary and capricious or in violation of law.

In the reply to BLM's answer to the statement of reasons, counsel for Coastal contends that BLM has failed to distinguish between its specific proprietary obligations and its general administrative functions. As stated by counsel for Coastal:

With respect to the BLM's specific proprietary obligations, Coastal submits that a commercial or contractual relationship must be recognized to exist between the parties, as lessor and lessee. As such, the express statutory and contractual provisions must be recognized as being controlling. In this context, Coastal would submit that general administrative provisions, which are not expressly mandated by statute or are at variance with express contractual provisions, would not be controlling and cannot be asserted to contravene any such express statutory and

contractual rights. It is the very existence of such binding proprietary obligations which differentiates the current attempt by the BLM to readjust the subject Federal Coal Leases from the issuance of new Federal coal leases by the BLM. In the former instance, the BLM must recognize its proprietary obligations to and commercial relationship with Coastal. In the latter instance, the BLM is not so constrained and is free to specify the prospective terms and conditions upon which Federal coal leases will be issued, and a potential lessee, which has undertaken no financial or contractual commitments prior thereto, is similarly free to accept or reject any such new lease.

(Reply at 3).

On August 30, 1982, certain parties filed a petition to intervene in the matter. Those seeking to intervene were the holders of the coal leases on December 14, 1973, when Coastal purchased the leases. Petitioners, at that same time, by contract with Coastal reserved an overriding royalty from the subject leases which royalty changes as the Federal royalty is adjusted. As such, those seeking to intervene allege that they have been and will continue to be directly affected by any adjustment in the royalty rate and by the outcome of this matter.

On September 20, 1982, counsel for Coastal filed an objection to the petition to intervene. In support of its objection counsel for Coastal asserts that on December 14, 1973, Coastal acquired the full right, title, and interest in and to the subject coal leases; that no other party reserved any right or entitlement with respect to the ensuing administration of the leases; and that since December 14, 1973, those seeking to intervene have not participated in the administration of the leases. Although counsel for Coastal acknowledges that those seeking to intervene did reserve an overriding royalty interest, Coastal asserts that such entitlement is strictly a passive economic interest which does not accord any record interest in or to the subject leases.

Petitioners clearly have an economic interest in the leases which are the subject of this appeal. That interest may be adversely affected by the outcome of this appeal, and they thus have a sufficient interest to participate in this on-going appeal. The petition for intervention is granted, and we will consider petitioners' response to Coastal's statement of reasons.

[1] We will first address Coastal's argument concerning the timeliness of the readjustment of the leases in question. Coastal points out that for lease SL 062583 it did not receive the specific terms of the readjustment until 17 days after the anniversary date of the lease (September 11, 1981). Coastal did, however, receive BLM's notice of intent to readjust on July 9, 1981. For lease U 062543 Coastal received both the notice and the specific terms prior to the anniversary date (March 1, 1982). Coastal asserts that BLM's failure to provide a final decision on the lease terms of U 062543 prior to the anniversary date should preclude readjustment.

Coastal's argument concerning timeliness must be rejected. Notice of intent to readjust is all that is necessary on or prior to the anniversary date of the lease. Rosebud Coal Sales Co., Inc. v. Andrus, 667 F.2d 949

(10th Cir. 1982), does not support Coastal's theory. In Rosebud the Court held that coal lease readjustment had to be made when each 20-year period expired and not later. In that case BLM had attempted to readjust a coal lease some 2-1/2 years after expiration of the 20-year period. The Court stated, quoting from the District Court's decision, "The government could easily have notified Rosebud on April 5, 1975 [the date of expiration of the 20-year period] at least that it intended to readjust the terms of the lease." Id. at 953. Thus, the Court contemplated that notice of intent to readjust given prior to expiration of the 20-year period would be sufficient.

In Kaiser Steel Corp., 63 IBLA 363, 367 (1982), the Board applied the Rosebud decision and a companion case, California Portland Cement Co. v. Andrus, 667 F.2d 953 (10th Cir. 1982), and held that where there was "no notice prior to the end of the 20-year period from BLM to the lessee that readjustment of the lease terms was contemplated, * * * BLM had no authority to belatedly readjust the terms in these coal leases as the several BLM decisions attempted to do." In Lone Star Steel Co., 65 IBLA 147 (1982), the Board did not find the procedure improper where notice of intent to readjust was given prior to expiration of the 20-year period, yet BLM's decision on the lessee's objections did not issue until after that date.

We find that where notice of intent to readjust a coal lease is given to a lessee prior to expiration of the 20-year period, such notice satisfies the statutory requirements for readjustment, and BLM may subsequently provide the specific terms or conditions for readjustment. ^{4/}

[2] Coastal further contends that FCLAA does not apply to coal leases issued prior to enactment (August 4, 1976) of that Act. That exact question was addressed by the Solicitor in Solicitor's Opinion M-36939, 88 I.D. 1003 (1981). Therein, the Solicitor concluded that "when the Secretary readjusts a pre-FCLAA lease he must do so in conformity with the Act [the Mineral Leasing Act] as amended." Id. at 1004. That conclusion has been applied by the Board in Lone Star Steel Co., supra.

We also reject Coastal's contention that it is somehow insulated from regulations promulgated pursuant to FCLAA and in effect at the time of readjustment (43 CFR 3451.1 (1981)) because of general provisions of its leases relating to regulations promulgated and "in force at date hereof" (Statement of Reasons at 12-13). That general lease language cannot serve to negate

^{4/} The Departmental regulations have been amended to reflect that notice of intent to readjust is sufficient. As stated in the Federal Register announcing that final rulemaking:

"The recent decision of the Tenth Circuit Court in the Rosebud Coal Sales Co. v. Andrus (No. 80-1842, Jan. 8, 1982) case is currently being reviewed in the Bureau of Land Management. The United States has decided not to appeal the decision. The court's decision was rendered after publication of the proposed rulemaking. The language of § 3451.1(b) has been amended in the final rulemaking to reflect the court's decision that Federal coal leases may not be readjusted unless actual notice is given of the readjustment, or of the intent to readjust, prior to the twenty-year anniversary date of the lease." 47 FR 33129 (July 30, 1982).

the statutory authority of the Secretary to readjust lease terms and conditions. Regulations in effect at the time of readjustment are applicable to leases subject to readjustment. Coastal would have us believe that only regulations in effect at the time its leases were issued govern the readjustment process. This is clearly incorrect. Just as the statute authorizes readjustment of terms and conditions, so too may the procedures for implementation be adjusted. Those procedures were revised pursuant to FCLAA. We find no ban to applying those regulations to readjustment of Coastal's leases.

Coastal attempts to create an issue by asserting that the readjustment process does not effectuate the issuance of a new lease, and that, therefore, the provisions of FCLAA are not mandatory. Regardless of whether readjustment creates a new lease or merely adjusts terms and conditions, the same requirements exist. Thus, Coastal may not escape the imposition of new terms and conditions. 5/

Since Coastal's leases are subject to readjustment pursuant to FCLAA and applicable regulations, we will turn to Coastal's objections to specific terms and conditions of the readjusted leases. The terms and conditions that Coastal challenges on appeal are as follows:

- Section 3. Diligence
- Section 4. Bonding
- Section 5. Rental
- Section 6. Production Royalty
- Section 23. Readjustment of Terms and Conditions
- Section 26. Lessee's Liability to Lessor
- Section 31. Special Stipulations

[3] Where readjusted lease terms or conditions are addressed by statute or regulation, BLM is required to impose those terms and conditions. Likewise, this Board must apply those provisions imposed by law, and we are without authority to waive or disregard legal obligations merely because a lessee challenges their imposition in the administrative appeals process. Lone Star Steel Co., supra at 150. Decisions by BLM imposing statutory or regulatory requirements will be affirmed.

Section 3 -- Diligence, Section 5 -- Rental, Section 6 -- Production Royalty, and Section 23 -- Readjustment of Terms and Conditions all involve statutory or regulatory requirements. At the time of readjustment of the leases in question the regulations defined the diligence standard as requiring coal production in commercial quantities before June 1, 1986, for pre-FCLAA leases. 43 CFR 3400.0-5(m)(2). Coastal argues that such a requirement breaches its contractual rights and is arbitrary and capricious. Coastal further asserts:

Even if it is determined that reliance may be placed upon section 6 of the FCLAA (amending section 7(a) of the MLLA) for this proposed requirement, Coastal asserted that the earliest fixed period within which to require the attainment of diligent development would be 10 years from the effective date of the

5/ The Solicitor has stated that a readjusted pre-FCLAA coal lease becomes a new contract governed by FCLAA. Solicitor's Opinion M-36939, supra at 1008.

proposed readjustments of SL-062583 and of U-062453, and not an arbitrary date specified in regulations which were promulgated subsequent to FCLAA.

(Statement of Reasons at 24).

As previously stated, FCLAA requirements may be imposed on pre-FCLAA leases at the time of readjustment. However, subsequent to BLM's decision in this case the diligence requirement was changed. In final rulemaking published in the Federal Register, on July 30, 1982, "diligent development" was defined as "the production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period." 30 CFR 211.2(a)(13), 47 FR 33180. The rulemaking further defined "diligent development period" as "a 10-year period which: (i) For Federal leases shall begin on * * * (b) The effective date of the first lease readjustment after August 4, 1976, for leases issued prior to August 4, 1976 * * *." 30 CFR 211.2(a)(14), 47 FR 33180-81 (July 30, 1982).

In the preamble to this rulemaking the Department states:

The DOI has determined that the congressional intent in mandating this 10-year period was prospective. The statutory period cannot be applied retroactively to Federal leases issued prior to August 4, 1976. Upon the first lease readjustment after August 4, 1976, this 10-year mandate must, however, be imposed as a readjusted Federal lease term [see Solicitor's Opinion M-36939 dated September 17, 1981]. It should be noted that if an operator/lessee elects to be subject to the rules of this Part prior to Federal lease readjustment, he may apply to the District Mining Supervisor in accordance with 30 CFR 211.20 and 30 CFR 211.24.

47 FR 33157 (July 30, 1982).

Thus, during the appeal period the regulations have been amended to reflect the position asserted by Coastal, concerning the effective date. However, Coastal further contends that the Department cannot require "production in commercial quantities" at the end of the 10-year period. Coastal contends that all that is required is that "production be commenced within said period" (Statement of Reasons at 25). In response we note that the regulations now define "commercial quantities" to mean "1 percent of the recoverable coal reserves or LMU recoverable coal reserves." 30 CFR 211.2(7); 47 FR 33180 (July 30, 1982). The regulations require such production. We are without authority to waive that legal obligation.

Given the change in the diligence requirement, BLM's decision as it relates to that requirement must be set aside and remanded so that the leases may be conformed to the new regulation.

Section 5, concerning the rental term, is specifically required by 43 CFR 3473.3-1(a) which provides that "[t]he annual rental per acre or fraction thereof on any lease issued or readjusted after the promulgation of this subpart shall not be less than \$3. The amount of the rental will be specified in the lease." Section 5 of the readjusted leases provides for a rental

of \$3 per acre or fraction thereof. Coastal objects stating that its lease terms provide for rental of \$1 per acre. BLM properly imposed the new rental to comport with the regulatory requirement.

Coastal argues that the proposed readjustment of the production royalty rates to 8 percent for underground coal breaches its contractual rights and is arbitrary and capricious. In Blackhawk Coal Co., 68 IBLA 96 (1982), we addressed a similar challenge to the Section 6 -- Production Royalty requirements. The Board stated:

Departmental regulation 43 CFR 3473.3-2 provides two ways of granting underground coal lessees relief from the statutory 12-1/2 percent royalty. Subsections (a)(1) and (a)(3) implement 30 U.S.C. § 207(a) (1976) and provide that a rate as low as 5 percent may be determined at lease issuance. 6/ Alternatively, the Department may establish a royalty rate in the lease and provide relief after lease issuance upon application of the lessee under subsection (d), which implements 30 U.S.C. § 209 (1976). Appellant has not persuaded us that it is unreasonable to establish an 8 percent royalty rate in the lease now, since the rate may temporarily be reduced later if conditions warrant. If a lower rate is put into the lease now and economic conditions change favorably during the term of the lease, there will be no opportunity for upward adjustment of the royalty figure until the lease is again ripe for readjustment. The method chosen by BLM thus assures the United States a fairer return over the life of the lease, provides appellant some relief from the statutory 12-1/2 percent rate, yet affords appellant an opportunity for further royalty relief when it is really needed. We previously have affirmed BLM decisions denying special royalty relief at lease readjustment, requiring lessees to seek such relief under 43 CFR 3473.3-2(d). Lone Star Steel Co., 65 IBLA 147 (1982); Garland Coal and Mining Co., 49 IBLA 400 (1980).

Id. at 99. Section 6 of the readjusted lease terms, concerning royalty obligations, was properly imposed by BLM.

Coastal objects to the Section 23 readjustment dates for the leases in question. The next readjustment dates are established as September 11,

6/ 30 U.S.C. § 207(a) (1976) provides:

"A coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities from that lease. Any lease which is not producing in commercial quantities at the end of ten years shall be terminated. The Secretary shall by regulation prescribe annual rentals on leases. A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12 1/2 per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations. The lease shall include such other terms and conditions as the Secretary shall determine. Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended."

1991, and March 1, 1992, for coal leases SL 062583 and U 062453, respectively. Coastal argues that the 10-year readjustment period of FCLAA is not applicable to its pre-FCLAA coal leases. Coastal asserts that imposition of the 10-year period violates its contractual rights and is arbitrary and capricious.

BLM properly overruled this objection stating:

Although lease readjustment is discretionary, the Secretary must impose certain lease terms and conditions on all pre-FCLAA leases at the time of their readjustment to conform to the provisions of FCLAA. One of these mandatory revisions is the periods at which readjustment may be undertaken. The FCLAA states that each lease shall be issued for a primary term of 20 years and shall be subject to readjustment every 10 years thereafter so long as production continues.

(Decision at 4).

The readjustment requirements imposed under Sections 4, 26, and 31 are not directly addressed by statute or regulation. ^{7/} Readjustment of lease terms and conditions, however, is not limited to specific legal requirements. As stated by the court in Rosebud Coal Sales Co., Inc. v. Andrus, supra at 951, "The scope or nature of the changes [readjustment] is not limited and there thus exists a very broad power to make changes considered to be in accordance with the proper administration of the lands."

Coastal generally attacks the bonding requirement (Section 4) and specifically states that the bonds for the two leases in question are "factually unsupported, are patently unreasonable, and are therefore, arbitrary, capricious and an abuse of discretion" (Statement of Reasons at 29). We have reviewed Coastal's assertions, and we find that the points raised were fully discussed by BLM in its response to Coastal's objections to readjustment. Therein, BLM stated concerning Section 4:

Under the Mineral Lands Leasing Act of 1920, as amended, 30 U.S.C. 187, the Secretary of the Interior is required to include in each lease "provisions . . . for the protection of the interests of the United States." Protection against default on the payment of lease rentals and royalties had historically (since 1920) been viewed as protecting the interests of the

^{7/} Although the regulations contain no specific formula for computing the amount of a bond, the present regulations do contain a definition of "lease bond." As used in 43 CFR Part 3400, "lease bond" means "the bond or equivalent security given the Department to assure payment of all obligations under a lease, exploration license, or license to mine, and to assure that all aspects of the mining operation other than reclamation operations under a permit on a lease are conducted in conformity with the approved mining or reclamation plan. This is the same as the "Federal lease bond" referred to in 30 CFR 742.11(a)." 43 CFR 3400.0-5(s); 47 FR 33134 (July 30, 1982). With only a minor difference this definition previously appeared at 43 CFR 3400.0-5(z) (1981).

United States. The bonding recommendations are based on guidelines established by the Minerals Management Service to protect the Government's interest should a company default in payments of rental and royalty. These guidelines require a bond in the amount sufficient to cover three (3) months of estimated production and one year's rental. It is noted that in the Minerals Management Service's reply to your objections, they have lowered the amount of bond required for Salt Lake 062583 due to decreased production to \$375,000. It is estimated that production will continue to decrease within three (3) to four (4) months, so that a request for new bonding recommendation could be made at that time.

Coastal has provided no arguments requiring that the BLM decision relating to the bonding requirement be overturned.

Coastal objects to the imposition of Section 26 -- Lessee's Liability to Lessor. Coastal asserts that the proposed readjustment provision establishes a "no fault" standard. Coastal's objections to Section 26 are without merit. BLM properly rejected these same arguments stating:

This lease provision has appeared as a standard stipulation in every lease issued since at least July 1977. Its inclusion can be construed as protecting the interests of the United States and is not intended to establish a condition of no fault for the United States Government. Lessee liability would be limited to equitable or legal remedies.

(Decision at 4).

Finally, Coastal challenges the special stipulations of Section 31 of its readjusted leases. Coastal asserts that while the special stipulations might be appropriate for inclusion in new, nonproducing coal leases, such stipulations "are totally inappropriate and unwarranted with respect to pre-FCLAA and producing leases which are being reviewed pursuant to the adjustment process" (Statement of Reasons at 44). Coastal argues that because its current operations are covered by approved mining plans the special stipulations are inappropriate.

Coastal's arguments are essentially the same as those presented to BLM. BLM responded as follows:

Objection Overruled: If the lessee has an approved mining plan containing cultural resource mitigation measures, this provision may be dropped from the readjusted lease with approval from the Advisory Council on Historic Preservation. Elimination of this provision from the lease would not remove the lessee's responsibilities to comply with the cultural resource mitigation provisions of the approved mining plan.

The BLM also has the responsibility under the Programmatic Memorandum of Agreement among the Advisory Council on Historic Preservation, the Bureau, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service to

assure compliance with the cultural resource related stipulations for lease areas outside of a mine plan area. If the lessee has complied with the cultural resource requirements of its mining plan, then the cultural resource stipulation should not prove burdensome.

In regards to subsection 6 of Section 31, there is precedent for protecting archaeological and paleontological resources on public lands as a special provision has appeared in federal coal leases issued since January 1981. Additionally, this paleontological resources provision should prove harmless to the lessee if the lessee has submitted a mining plan and had it approved.

Finally, subsection 2 of Section 31 is inserted so as to comply with a requirement of the FCLAA.

Since specific objections and stipulations were not referred to, any additional questions concerning stipulations in Section 31 may be discussed with Orval Hadley, Chief, Branch of Lands, and Minerals and Recreation.

(Decision at 5).

Although Coastal asserts that some of the special stipulations are duplicative of other adjusted terms and conditions, we cannot find that any of the stipulations "are in breach of [Coastal's] contractual rights and are arbitrary, capricious and an abuse of discretion," as argued by Coastal (Statement of Reasons at 45). We note that Coastal was invited to discuss any specific objections to the stipulations with a representative of BLM.

The BLM decision appealed from fully and adequately discussed the rationale for rejecting Coastal's objections to readjustment of the leases. Coastal has failed to establish error in the readjustment process or in the challenged terms and conditions. The BLM decision is affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and set aside as to the diligence requirement and remanded.

Bruce R. Harris
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

